

of such decision. In all other cases, the decision of the administrative law judge shall become final agency action within the meaning of 5 U.S.C. 704.

(b) A notice of appeal to the Secretary shall state with specificity the issue(s) in the decision of the administrative law judge on which the party is seeking review. Such notice of appeal must be served on all parties of record.

(c) Upon receipt of a notice of appeal, the Secretary shall request the Chief Administrative Law Judge to submit to him a copy of the entire record before the administrative law judge.

§ 2570.11 Scope of review.

The review of the Secretary shall not be a *de novo* proceeding but rather a review of the record established before the administrative law judge. There shall be no opportunity for oral argument.

§ 2570.12 Procedures for review by the Secretary.

(a) Upon receipt of a notice of appeal, the Secretary shall establish a briefing schedule which shall be served on all parties of record. Upon motion of one or more of the parties, the Secretary may, in his discretion, permit the submission of reply briefs.

(b) The Secretary shall issue a decision as promptly as possible after receipt of the briefs of the parties. The Secretary may affirm, modify, or set aside, in whole or in part, the decision on appeal and shall issue a statement of reasons and bases for the action(s) taken. Such decision by the Secretary shall be final agency action within the meaning of 5 U.S.C. 704.

Subpart B—Procedures for Filing and Processing Prohibited Transaction Exemption Applications

SOURCE: 55 FR 32847, Aug. 10, 1990, unless otherwise noted.

§ 2570.30 Scope of rules.

(a)(1) The rules of procedure set forth in this subpart apply to all applications for exemption which the Department has authority to issue under:

(i) Section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA);

(ii) Section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code) (see Reorganization Plan No. 4 of 1978); or

(iii) The Federal Employees' Retirement System Act of 1986 (FERSA) (5 U.S.C. 8477(c)(3)).

(b) The Department will generally treat any exemption application which is filed solely under section 408(a) of ERISA or solely under section 4975(c)(2) of the Code as an exemption filed under both section 408(a) and section 4975(c)(2) if it relates to a transaction that would be prohibited both by ERISA and by the corresponding provisions of the Code.

(c) The procedures set forth in this subpart represent the exclusive means by which the Department will issue administrative exemptions. The Department will not issue exemptions upon oral request alone. Likewise, the Department will not grant exemptions orally. An applicant for an administrative exemption may request and receive oral advice from Department employees in preparing an exemption application. However, such advice does not constitute part of the administrative record and is not binding on the Department in its processing of an exemption application or in its examination or audit of a plan.

§ 2570.31 Definitions.

For purposes of these procedures, the following definitions apply:

(a) An *affiliate* of a person means—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any director of, relative of, or partner in, any such person;

(3) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner; and

(4) Any employee or officer of the person who—

(i) Is highly compensated (as defined in section 4975(e)(2)(H) of the Code), or

(ii) Has direct or indirect authority, responsibility, or control regarding the